SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 401

THE UNITED STATES, APPELLANT

vs.

READING COMPANY

No. 402

READING COMPANY, APPELLANT

vs.

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

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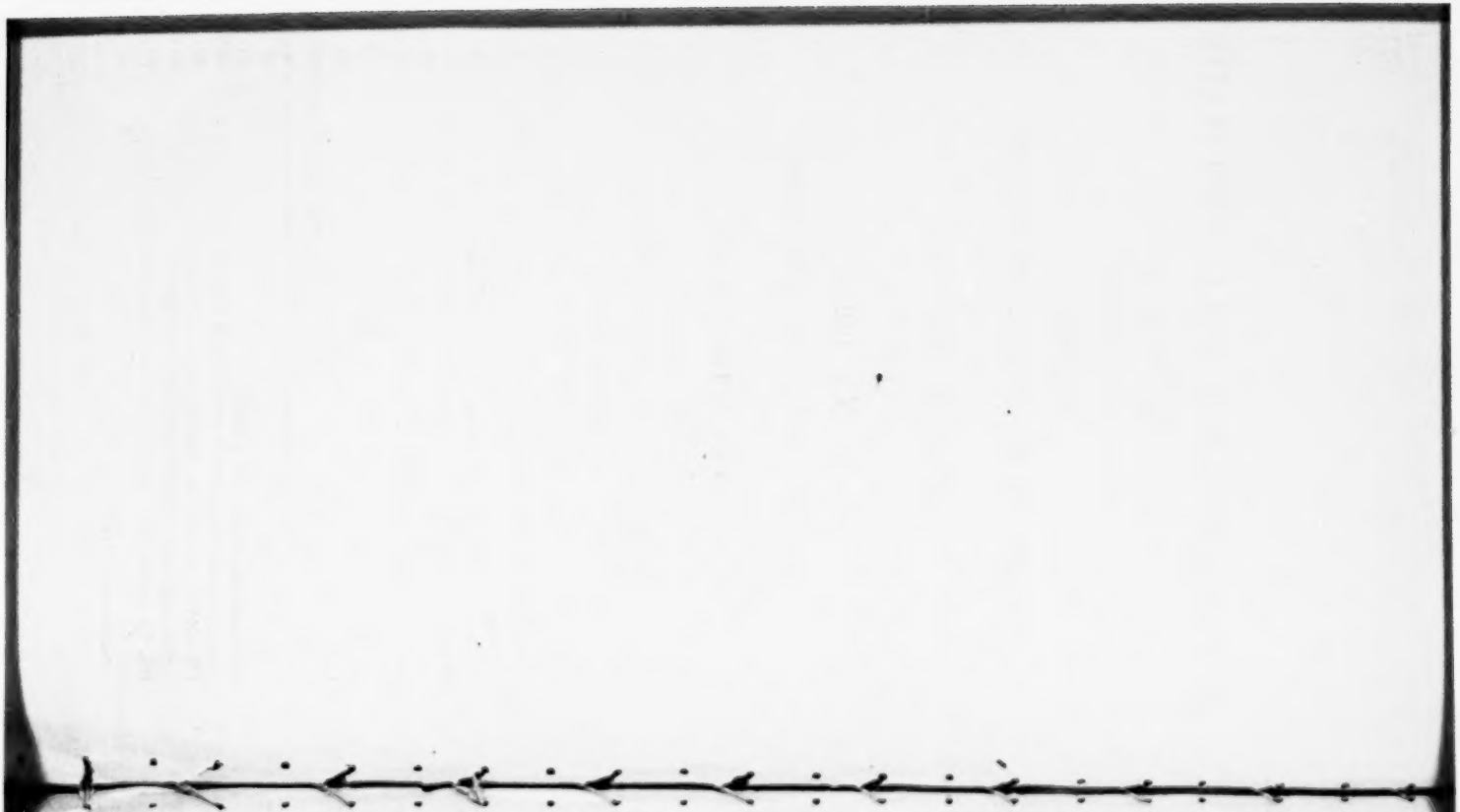

1 In the Court of Claims

PHILADELPHIA AND READING RAILWAY COMPANY

v.

THE UNITED STATES

No. 34747

I. *Petition*

Filed Dec. 3, 1920

To the Honorables, the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully shows unto your honors the following facts:

I

Petitioner is a corporation organized and existing under the laws of the State of Pennsylvania, and has always borne true faith and allegiance to the United States and has never voluntarily aided or abetted its enemies.

For many years prior and up to the first day of January, 1918, petitioner operated, and since the first day of March, 1920, it has operated a system of railways in said State, doing business as a common carrier of passengers and freight for hire and reward under tariffs duly published and filed by it and by its connections, with petitioner's concurrence, with the Interstate Commerce Commission.

II

During said times there were in effect upon all the lines party to the transportation hereinafter mentioned certain baggage and special baggage-car tariffs of the carriers, by the latter of which it was provided, in substance and effect that, under certain circumstances,
2 parties paying not less than twenty-five adult fares amounting to not less than $25 for the movement, might become entitled, at the convenience of the carrier, to a special baggage car free for the transportation of certain of their effects, and if baggage cars were not available freight box cars might be substituted to serve the same uses at the option of the carrier.

III

The tariffs hereinbefore referred to were compiled in accordance with law and with the rules and regulations of the Interstate Commerce Commission, which require separate tariffs for freight and passenger business, and they are typical of tariffs long prevailing

generally throughout the country to which practically all railway lines are parties. Some of said tariffs may be susceptible of the interpretation that they provide for free cars for other transportation than theatrical paraphernalia, but they have always been intended, understood and construed to apply only to the transportation in the baggage service of theatrical paraphernalia, or, at most, in addition to theatrical paraphernalia, of personal and sample baggage and those certain specified articles which, though not strictly baggage, it was nevertheless provided would be handled in the baggage service, under terms and conditions, for the convenience of passengers, such as dogs, baby carriages, bicycles and so forth, and up to the month of April, 1918, it had never been contended that they allowed for the transportation in the baggage service of articles essentially freight, in favor of which no provision had been made. The restrictions imposed in said tariffs do not give an undue preference to anybody over the United States, nor do they constitute an unlawful discrimination against the United States in failing to allow the free transportation of the camp equipment and military sup-
3 plies, which are of a character essentially freight, in connection with movements of troops.

IV

With respect to the articles pertaining to and accompanying bodies of troops, and composed of tents, ambulances, wagons, caissons, ammunition, tools and other articles peculiar to military impedimenta, and sometimes called company, or battalion or regimental "property" or "camp equipment," it has always been claimed by carriers and conceded by the Quartermaster General of the United States Army that such shipments were essentially freight and were so to be treated in settlements with carriers for their transportation. For many years the Quartermaster General has issued periodically a publication entitled "Manual for Quartermaster Corps," and of the edition thereof published and made effective in December, 1916, and still in full force and effect, paragraphs 3441, 3443, 3445, 3453, 3494, 3498 and 3500, amongst others, recognize the clear distinction between public property and equipage or army baggage on the one hand and the baggage entitled to free transportation, or transportation in the baggage service, on the other hand.

V

On April 29, 1918, in a settlement made with the Louisville & Nashville Railroad Company by the Auditor for the War Department for the transportation of the impedimenta, consisting of eight carloads, accompanying a troop movement of 587 men from Montgomery to Mobile, Alabama, the auditor held that all of said shipment except three escort wagons was entitled to free transportation under the special baggage-car tariff of the carrier; and on

4 claimant's appeal to the Comptroller of the Treasury the comptroller held that the entire shipment was entitled to free transportation, and he disallowed the amount allowed by the auditor. (24 Comp. Dec. 774.) Said decision has been followed by the disbursing and accounting officers of the Government ever since, without regard to the difference in phraseology of the different tariffs, and appeals to the comptroller have been uniformly unsuccessful. With respect to the tariffs indisputably limiting free baggage cars to theatrical paraphernalia, he has held that notwithstanding such a limitation the United States was nevertheless entitled to the free use of such cars for the transportation of its camp equipment and troop property, as otherwise there would be an undue and unreasonable preference and an unlawful discrimination against the United States. Much of the freight for which free carriage has been claimed could not possibly be loaded into baggage cars.

VI

For some time prior to July 1, 1915, there had been in effect in each of the different passenger association territories of the carriers agreements, duly executed by the proper representatives of the carriers and the authorized officers of the War and Navy Departments and of the Marine Corps, the purpose of which was to agree upon and define the rights of the parties, to simplify accounting, to expedite settlements and to insure the speedy transportation of troops and their supplies upon terms that were deemed equitable to both the carriers and the Government; and in said agreements reduced rates were allowed on military transportation, it being provided in all of them as follows:

5 "RULES AND REGULATIONS

"(4) The fares authorized herein shall be five per cent (5%) less than the properly constructed net fares between competitive points, with a maximum reduction of $ [differing in the different territories] per capita.

* * * * * * *

"(10) One hundred and fifty (150) pounds of personal effects of officers and men properly checkable as baggage will be transported without charge for one person, but this does not include company, battalion, regimental or Government property. Personal baggage in excess of the weight stated, when provision for transportation of same is specifically made in U. S. Army, U. S. Navy and U. S. Marine Corps transportation request. will be charged for at the excess baggage rates less lawful land-grant deductions.

"When company, battalion, regimental or Government property is moved on passenger trains, it shall be subject to adjustment for each movement."

Said agreements were renewed from time to time (including July 1, 1916), until superseded by interritorial military arrangements, made effective January 1, 1917, which was a revised and consolidated agreement executed by the proper representatives of carriers throughout the entire country and the authorized officers of the Marine Corps and of the War and Navy Departments, and which provided as follows:

"iii

"TRAFFIC COVERED BY THIS ARRANGEMENT

"The net fares, allowances and routes in connection therewith, authorized hereunder, are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy and United States Marine
6 Corps, for whom the United States is lawfully entitled thereto and when traveling on transportation requests of the issues of the United States Army, United States Navy and United States Marine Corps and at United States Government expense only.

"iv

"NET FARES AND ALLOWANCES

"(1) (*a*) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exceptions, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allowance not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special train and special car movements as well as individual and party movements. (See Section XI.)

"(*b*) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"xv

"BAGGAGE

"(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage, under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy or Marine Corps transportation requests and is paid for by the United States Government, will be charged for at the regular excess baggage rate, based upon the net individual fare.

When provision is not made in the transportation requests for
7 the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental or Government property is not included in the above."

VII

By the agreements prior to the interterritorial military arrangements it was intended, and they were construed, to provide that the transportation of impedimenta accompanying troops should be paid for as separate transactions, under the freight tariffs of carriers according to their provisions with reference to the character of service furnished, as had been the long established practice, and settlements were made with carriers on that interpretation of said agreements. The intent and effect of paragraph XV of the interterritorial military arrangements was to provide specifically that the transportation of impedimenta was not covered by the baggage tariffs of carriers.

Said interterritorial military arrangements effective January 1, 1917, was promulgated to carriers by the committee which made it in their behalf with the statement that "This interterritorial military arrangement is but an extension of the one which became effective July 1, 1916," and by the Quartermaster General, U. S. Army, copies were issued to quartermaster officers with the following explanation:

"WAR DEPARTMENT,
Washington, March 3, 1917.

"(1) With reference to agreement entered into by this office under authority of the Secretary of War (see A. G. O. 2238747) with various railroad lines, there are enclosed copies of new arrangements effective January 1st, 1917, covering military travel within Central Passenger Association territory and interterritorial military arrangement covering travel between various sections of the United States, also one copy of southeastern military arrangement No. 2. The new agreements are along the same lines as the old ones; some disputed points which have been the subject of correspondence have been cleared up and are therefore published in the new arrangements."

Petitioner and all the other carriers participating in the transportation hereinafter mentioned were parties to the aforesaid agreements, which were never denounced by either side until superseded by succeeding agreements carrying the provisions the same as those which have been quoted, and the said interterritorial military ar-

rangements is still in full force and effect, and its provisions have been faithfully observed by carriers generally, including petitioner. Under its operation the Government has paid substantially five per cent less than it otherwise would have paid for an enormous volume of passenger transportation, whether the travel was of single individuals, or of groups, regiments or divisions. In many instances the movements of large bodies of troops were not accompanied by shipments of any considerable amount of impedimenta, and movements of individuals and groups were seldom if ever accompanied by such shipments. The said agreement, as a whole, is believed to have operated economically for the Government, and its
9 concessions, particularly the concession of five per cent on passenger fares, has resulted in saving to the United States very large sums of money.

Wherefore petitioner alleges that said baggage and special baggage-car tariffs did not allow for the free transportation of company, battalion, and regimental property, camp equipment and military supplies at the rate of one car for every 25 men in the accompanying troop movements, or at all; but that if said tariffs were otherwise applicable they were made inapplicable by the terms of contracts which have been executed and of which the United States have received the benefits.

VIII

At various times during the years 1916 and 1917 petitioner in connection with other railway lines, at the instance and request of the proper officers of the United States Army, transported from other points to points on petitioner's line, large shipments of freight, some of which moved in connection with bodies of troops.

For the passenger transportation concerned in said movements, the regular transportation requests were issued and payment was made to the initial carrier of rates that were substantially five per cent less than the rates that would have been due and payable except for the concession of five per cent to the Government in said military agreements. For the accompanying freight movements regular Government bills of lading were issued in conformity with the directions contained in the quartermaster's manual set forth in paragraph IV, the said shipments being described as company, battalion or regimental property, camp equipment, and in some instances, in greater detail.

10 ## IX

Petitioner was the last carrier of said shipments and as such last carrier rendered its bills for the freight service to the disbursing quartermaster, U. S. Army, Washington, D. C., which bills were based upon the current published freight classifications of the carriers. The disbursing quartermaster did not pay any of said bills

as rendered, but paid some of them as if the shipments had consisted of emigrant moveables, under current rulings of the Comptroller of the Treasury. When the disbursing officers' accounts were examined by the Auditor for the War Department, additional deductions were made by the auditor, who applied the ruling that the Government was entitled to a free car for every 25 men in accompanying passenger movements, and on petitioner's refusal to remit the amount of same the auditor made equivalent deductions from subsequent bills of petitioner. In other instances original settlements were made on the basis of a carload free for every 25 men and the excess, if any, paid for as emigrant moveables; so that, with respect to every item herein complained of, final settlement was made on the basis, first, of deduction of one car for every 25 men, and second, reduction of the excess cars, if any, to the emigrant moveables basis. Many carloads of such things as artillery and horses have been claimed entitled to free carriage under the baggage tariffs.

The aggregate amount of underpayments to claimant resulting from said deductions and reductions is the sum of $31,878.87. An itemized statement of the claim is contained in an appendix hereunto attached and made part of this petition.

11 X

Petitioner respectfully shows to the court that the military impedimenta accompanying the bodies of troops hereinbefore referred to was not in fact emigrant moveables or theatrical paraphernalia, nor of similar character, nor was it transported under substantially similar circumstances and conditions with either; nor was said impedimenta personal or sample baggage, nor did it consist of the articles for the handling of which in the baggage service any provision was made in the baggage tariffs, but that, on the contrary, it was essentially freight and entitled to be treated as such; and furthermore, that by contract of shipment as freight shipment, as well as by the contract made by said military agreements and by the receipt uniformly of the substantial benefits under the same the Government has waived any rights it otherwise might have had to the free carriage of military impedimenta in the baggage service.

Premises considered, petitioner demands judgment against the United States in the sum of $31,878.87, no part of the same having been paid and petitioner's right thereto not having been transferred or assigned.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By LOUIS T. MICHENER,
Its Attorney in Fact.

[Sworn to by Louis T. Michener; jurat omitted in printing.]

Philadelphia & Reading Railway Company, accounting department—Claim account of baggage allowance for each 25 persons in troop movement—Balances paid on emigrant movables basis

Company Bill No.	Government B/L. No.	Date	From—	To—	Amount	Deducted by Government	References to settlement
2-73	9651	2-13-1917	El-Paso, Texas	Phila., Pa	$26,257.76	$18,361.15	Certificate 50753.
74-76	5216	10-30-1916	" "	"	1,018.50	420.95	Quartermaster's voucher 3994 for June, 1917, suspended.
77	6008	11-14-1916	" "	So. Beth., Pa	3,482.06	2,655.85	Wood's voucher 13277, March, 1918, suspended.
78	9997	2-12-1917	" "	Doylestown, Pa	511.54	511.54	Certificate 54760.
79-80	10305	2-20-1917	" "	Mah. City, Pa	831.00	831.00	Certificate 52361.
81	10308	2-20-1917	" "	Tamaqua, Pa	435.30	435.30	Wood's voucher 12097-T, May, 1918, suspended.
82	10306	2-20-1917	" "	Pottsville, Pa	415.50	415.50	Certificate 52361.
83	10247	2-19-1917	" "	"	448.50	448.50	Certificate 52361.
84	9991	2-12-1917	" "	Allentown, Pa	558.82	380.76	Certificate 57470.
85-86	8501	1-9-1917	" "	Reading, Pa	893.40	893.40	Certificate 52359.
87-88	8502	1-9-1917	" "	Hamburg, Pa	893.40	893.40	Certificate 52359.
89-90	8505	1-9-1917	" "	Allentown, Pa	893.40	893.40	Certificate 52359.
92-100	8510	1-9-1917	" "	Allentown, Pa	3,085.80	3,085.80	Wood's voucher 1898, May, 1918, suspended.
101	8504	1-9-1917	" "	Lebanon, Pa	446.70	446.70	Certificate 52253.
102	8503	1-9-1917	" "	Pine Grove, Pa	446.70	446.70	Certificate 52253.
103	8511	1-9-1917	" "	Harrisburg, Pa	446.70	446.70	Certificate 52253.
104	8512	1-9-1917	" "	Harrisburg, Pa	313.20	313.20	Certificate 55099.
					41,378.28	31,878.87	

14 II. *General traverse, Feb. 2, 1921*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *History of proceedings*

On December 12, 1922, this case was argued and submitted on merits by defendant, and submitted without argument by plaintiff.

On December 18, 1922, the court filed an order remanding the case to the calendar with leave to both parties to take further testimony.

On February 7, 1923, the case was argued and submitted on order of remand.

On March 12, 1923, the court filed findings of fact and conclusion of law and entered judgment in favor of the plaintiff in the sum of $14,236.04.

On April 30, 1923, the plaintiff filed a motion for a new trial and for amendment of findings of fact.

On May 11, 1923, the defendant filed a motion for a new trial.

On May 14, 1923, the court filed an order allowing the motion of the parties for a new trial and vacated and set aside former judgment.

On June 11, 1923, the case was argued and submitted on new trial.

On November 5, 1923, the court filed an order withdrawing former findings and judgment and filing new findings and entering judgment against plaintiff in the sum of $87.09 for the cost of printing the record.

On January 21, 1924, by leave of court, the plaintiff filed a motion for amendment of findings.

On February 11, 1924, by leave of court, the plaintiff was allowed to withdraw motion for amendment of findings filed January 21, 1924. An order was also filed allowing both parties to take testimony and ordered that motions for new trial and briefs be filed on or before April 8, 1924.

15 On March 3, 1924, on motion made therefor, the Reading Company was substituted as plaintiff in this case.

On April 14, 1924, the plaintiff filed a motion for a new trial and for amendment of findings.

On April 24, 1924, the defendant filed objections to said motion.

On April 29, 1924, the plaintiff's motion for new trial and amendment of findings of fact was argued and submitted.

On June 2, 1924, the court filed an order referring this and other similar cases to George M. Anderson, commissioner, to ascertain and report the facts, and leave was granted to both sides to file exceptions to said report.

On July 31, 1924, the said special commissioner filed his report and findings of fact.

On September 13, 1924, the plaintiff filed exceptions to the report of said commissioner.

On October 18, 1924, by leave of court, the defendant filed exceptions to the report of said commissioner.

IV. *Argument and submission*

On October 29, 1924, this case was argued and submitted on report of special commissioner by Mr. F. Carter Pope, for plaintiff, and Messrs. A. A. McLaughlin and L. A. Smith, for defendant.

V. *Order of court*

Entered January 5, 1925

This cause was submitted to the court upon the report of the commissioner heretofore appointed to make findings of fact and report thereon, upon the evidence adduced in the case and upon the exceptions of the plaintiff and of the defendant to parts of the
16 commissioner's report. On consideration whereof it is adjudged and ordered this 5th day of January, 1925, that the said exceptions of the plaintiff and of the defendant to the said commissioner's report be and the same are overruled, and the report is confirmed.

It is further ordered that the findings of fact and conclusion thereon and opinion hertofore filed in this cause be and the same are vacated and withdrawn. Findings of fact and conclusion of law are this day filed, with an opinion by Chief Justice Campbell. Judgment is granted in favor of the plaintiff in the sum of $14,236.04.

17 VI. *Findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.*

Entered January 5, 1925

This case having been heard by the Court of Claims upon the report of the special commissioner and the evidence, the court makes the following

Findings of fact

I

This suit was brought by the Philadelphia & Reading Railway Co., which has since been reorganized and its name changed to the Reading Company. Wherever the word "plaintiff" is used in these findings of fact it will be understood to refer to the Philadelphia & Reading Railway Co.

The plaintiff was and its successor is a corporation duly incorporated under the laws of the State of Pennsylvania. At the times of the different transactions hereinafter set forth in these findings of fact it operated, and its successor still operates, a system of railways in the State of Pennsylvania and other States, doing business as a carrier of passengers and freight for hire and reward under tariffs duly filed with the Interstate Commerce Commission by it and by its connecting lines, with its concurrence, and published as provided by law.

II

When the troops and Army impedimenta hereinafter described were transported there were in force on all the lines which furnished such transportation special baggage tariffs which covered the territories through which said troops and impedimenta were moved. Said special baggage tariffs provided, in substance and effect, the terms and conditions under which associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects at the rate of one car free to each (generally) 25 passengers paying full fares.

III

With respect to the articles pertaining to and accompanying bodies of troops, and composed of tents, ambulances, wagons, caissons, ammunition, tools, and other articles peculiar to military
18 impedimenta, and sometimes called company or battalion or regimental "property" or "camp equipment," it has always been claimed by carriers and conceded by the Quartermaster General of the United States Army that such shipments were essentially freight and were so to be treated in settlements with carriers for their transportation.

For many years the Quartermaster General has issued periodically a publication entitled "Manual for Quartermaster Corps," and the edition thereof published and made effective in December, 1916, and still in full force and effect, contains paragraphs 3391, 3441, 3443, 3445, 3453, 3494, 3498, and 3500, which, amongst others, recognize the clear distinction between public property and equipage or Army baggage on the one hand and the baggage entitled to free transportation, or transportation in the baggage service, on the other hand. A decision of the comptroller of June 18, 1918 (24 Comp. Dec. 774), to effect that, under the provisions of carriers' baggage tariffs the Government was entitled to one car free for every 25 passengers in the accompanying passenger movement was the first notification that the Government claimed one special baggage car or its equivalent for every 25 soldiers traveling with Army impedimenta. Prior to that decision the Government paid for such impedimenta as freight.

IV

Since the decision of the comptroller of June 18, 1918, accounting officers of the Government have made settlements upon the basis that the United States was entitled to one baggage car free for the transportation of its camp equipment and company property for every 25 officers and enlisted men traveling.

V

Prior to January 1, 1917, the plaintiff and all the other lines, parties to the interterritorial military arrangements which became effective on that date, were parties to agreements, known as military agreements, between authorized representatives of the carriers and authorized officers of the War and Navy Departments, which were for the most part similar to and superseded by the later arrangements.

The said interterritorial military arrangement or contract was entered into between the United States Army, Navy, and Marine Corps, and the carriers in the territories of the Central Passenger Association, New England Passenger Association, Southeastern Passenger Association, Southwestern Passenger Association, Transcontinental Passenger Association, Trunk Line Association, and Western Passenger Association, to become effective January 1, 1917, and to supersede and cancel all previous interterritorial arrangements between the same parties, the material and relevant parts of which are as follows:

"iii

"TRAFFIC COVERED BY THIS ARRANGEMENT.—The net fares, allowances, and routes in connection therewith authorized hereunder are applicable exclusively for the transportation of officers, en-
19 listed men, and others connected with the United States Army, United States Navy, and United States Marine Corps, for whom the United States Government is lawfully entitled thereto, and when traveling on transportation requests of the issues of the United States Army, United States Navy, and United States Marine Corps and at the United States Government expense only.

"iv

"NET FARES AND ALLOWANCES.—(1) (a) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exceptions, Sec. V), less lawful land-grant deductions properly established, less 5 per cent (5%), the 5 per cent allowance not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic, as described in Section III, includ-

ing special train and special car movements, as well as individual and party movements. (See Sec. XI.)

"(b) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"xi

"When special cars or special trains are furnished hereunder, not less than the minimum number of fares for such special cars or special trains will be required.

"xv

"BAGGAGE.—(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage, under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated when provision for the transportation of the excess baggage is specially made in United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government will be charged for at the regular excess-baggage rate, based upon the net individual fare. When provision is not made in the transportation request for transportation of excess baggage, collection will be made for the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess-baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental, or Government property is not included in the above.

"xx

"TERMINATION OF ARRANGEMENT.—It is understood that this arrangement may be terminated at the pleasure of the United States Army, United States Navy, and United States Marine Corps, independently of each other, and the withdrawal from the arrangement of one of these branches of the Government will in no way affect the operation of the arrangement as to the other branches of the Government electing to continue it, the reservation being made, however, that the carriers may withdraw from the arrangement at their option."

VI

The interterritorial military arrangement effective July 1, 1916, which was superseded by the similar agreement effective January 1, 1917, referred to in Finding V, was indorsed by the comptroller

in a letter to the Secretary of War, dated May 20, 1916, which among other things, contained the following:

"9. This agreement is considered advantageous to the Government for the following reasons: (a) It will result in a saving of Government funds. (b) It will procure cooperation on the part of the railroads. (c) It will facilitate the settlement of accounts."

On March 3, 1917, the Quartermaster General, with the approval of the Secretary of War, ordered copies of said interterritorial military arrangements to be forwarded to different officers throughout the country concerned with the movement of troops, with the statement that "the new arrangements are along the same lines as the old ones; some disputed points have been cleared up and are therefore published in the new arrangement."

On September 15, 1917, all department, depot, and camp quartermasters were notified by the Quartermaster General that:

"1. It is desired that all shipping quartermasters be instructed that camp equipment and impedimenta will not be carried as checkable baggage, and that checkable baggage includes only wearing apparel and related articles ordinarily carried in a trunk by a commercial traveler."

Copies of said interterritorial military arrangement were distributed to all quartermasters between February 28, 1917, and March 3, 1917.

VII

The said interterritorial military arrangement was in full force and effect as late as May 20, 1920, and its provisions have been observed by the carriers generally. Under the terms of said arrangement the Government has paid for transportation at rates substantially 5 per centum less than it otherwise would have paid.

VIII

At various times during the year 1917 plaintiff and other carriers transported a number of movements of United States troops to terminal points on plaintiff's lines. The troops were transported on regular transportation requests at rates substantially 5 per cent less than the regular tariff rates, and the Army impedimenta was moved as freight on bills of lading issued by the Government.

IX

The plaintiff, at the time the military impedimenta in question here was moved, had on file with the Interstate Commerce Commission a tariff entitled "Southwestern Lines Classification
21 Exceptions and Rules—Circular No. 1–G, F. A. Leland's I. C. C. 1137," item 146–D, which reads as follows:

	Class	
	Less carloads	Carloads
Ordnance and quartermaster's stores (Section A): Government freight— State and Federal munitions of war, including Indian supplies moving under Government bills of lading, will be transported in regular freight-train service on the following basis—		
Ammunition and live stock	Regular classification and tariff, subject to land-grant deductions. * * *	
Army field ranges and cooking outfits, not boxed or crated * * *	1. (Net cash)	
Camp equipage; minimum weight 30,000 pounds		A. (Net cash.)
All other articles, comprising ordnance and other munitions of war—not including camp equipage or baggage—carload, minimum weight 30,000 pounds. * * *	Regular classification and tariff, subject to land-grant deductions. * * *	A. (Net cash.)

The said tariff also provided classifications for the different articles composing said shipments, and in addition thereto the following:

"Class D

"Emigrants' movables, not for sale or speculation, prepaid (see note).

"NOTE.—The term 'emigrants' movables' will apply to the property of an intending settler only and will include tools and implements of calling, including hand and foot power machines, but not including machinery driven by steam, electricity, gas, gasoline, compressed air, or water, other than agricultural implements; second-hand store fixtures of merchants; second-hand vehicles, not including self-propelled vehicles, hearse, and similar vehicles, livestock, trees and shrubbery, lumber and shingles, fence posts; one portable house K. D., seeds for planting purposes, food for livestock while in transit, and household goods not to exceed two pianos, but does not include general merchandise, acids, drugs, explosives, matches, paints, or inflammable oils nor any articles, whether herein enumerated or not, which are intended for sale or speculation.

* * * * * * *

"Household goods and emigrants' movables, including old or used furniture, prepaid:

"When the value of the shipments exceeds ten (10) dollars per hundred (100) pounds and the consignor so states (subject to notes 1 and 3) (C. L. min. wt. 12,000 lbs.) (subject to rule 27, L. C. L., class 1½; C. L., class 1).

"When the value of the shipment does not exceed ten (10) dollars per one hundred (100) pounds and the consignor so states (subject to notes 2 and 3) (C. L. min. wt. 12,000 lbs.) (subject to rule 27)."

Notes 1 and 2 referred to set out the contract the shipper was to execute according to the value of the shipment; rule 27 prescribed the terms upon which cars of special size would be furnished; and note 3 specified the contents of shipments of household goods and emigrant movables substantially the same as western classification.

22 X

The plaintiff, as the last carrier, rendered its bills for the transportation of freight as described in Finding VIII to the disbursing quartermaster of the United States Army. Pending the settlement of said bills the plaintiff's railroad was taken over by the Government on January 1, 1918, under the act of August 29, 1916 (39 Stat. 619, 645), and the President's proclamation of December 26, 1917, and accordingly came under the control, management, and operation of the United States Railroad Administration, by which agency its operation and control were continued until March 1, 1920 (41 Stat. 457). To whom the amounts referred to in this finding were paid by the disbursing officer is set out hereafter in Finding XI.

Bill 1–73, B. L. WQ. 9651, was originally stated by plaintiff in the sum of $23,536.70, and was corrected and restated by plaintiff in the sum of $18,835.92. The sum of $85.60, feeding charges, was stricken out, by whom not shown, and the bill was paid by the disbursing officer in the sum of $18,750.32. The clasification of the military impedimenta in the original bill and the restated bill was the same and no part of the difference between the amounts stated in the original and restated bill was due to change from class A, net cash, to class D.

Bill 6629–30–31 (erroneously stated by plaintiff as bill 74–76), B. L. WQ–5216, was originally stated by plaintiff in the sum of $1,018.50 on the basis of class A, net cash, rating for military impedimenta and was restated by plaintiff in the sum of $657.65 on the basis of class D with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 77 (alias 6658–68), B. L. WQ–6008, was originally stated by plaintiff in the sum of $3,482.06 and was restated in the sum of $2,609.67, by whom not shown; it was afterwards corrected by plaintiff to the sum of $2,134.66, which was paid by the disbursing officer. No part of the difference in amount between the original and corrected bill was due to a change from class A, net cash, to class D, with land-grant deduction on military impedimenta.

Bill 78, B. L. WQ–9997, was originally stated by plaintiff in the sum of $179.40 on the basis of class D on military impedimenta with land-grant deduction, and was paid in that amount by the disbursing officer.

Bill 79–80–82–83 (alias bill 79–80), Bs. L. WQ–10247, WQ–10305, WQ–10306, was originally stated by plaintiff in the sum of $1,695.60 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $633.01 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 81, B. L. WQ–10308, was originally stated by plaintiff in the sum of $423.90 on the basis of class A, net cash, on military impedimenta, and was corrected to the sum of $189.71, by whom not shown; it was afterwards corrected by plaintiff to the sum of $194.93 on the

basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 84, B. L. WQ–9991, was originally stated by the plaintiff in the sum of $499.53 on the basis of class A, net cash, on mili-
23 tary impedimenta, and was restated by plaintiff in the sum of $255.57 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bills 86–88–85–87–88–90 (alias bills 85, 86, 88 and 88–90), Bs. L. WQ–8502 and WQ–8505, was originally stated by plaintiff in the sum of $1,482.42 on the basis of class D on military impedimenta, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 92–100, B. L. WQ–8510, was originally stated by the plaintiff in the sum of $1,516.90, in which amount it was paid by the disbursing officer; no claim for freight charges for transportation of military impedimenta are made by plaintiff. There is no satisfactory evidence produced to show that this bill was ever presented in any larger amount.

Bill 100–103, inclusive (alias bills 101, 102, 103), Bs. L. WQ–8504, WQ–8503, and WQ–8511, was originally stated by plaintiff in the sum of $1,271.70 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $741.21 on the basis of class D, with land-grant deduction, in which amount it was paid by the disbursing officer.

Bill 104, 100–103, inclusive (alias bill 104), B. L. WQ–8512, was originally stated by plaintiff in the sum of $423.90 on the basis of class A, net cash, on military impedimenta, and was restated by plaintiff in the sum of $268.78 on the basis of class A, with land-grant deduction, in which amount it was paid by the disbursing officer. No articles comprising military impedimenta were involved.

The difference between the amounts stated by plaintiff in its original bills at class A, net cash, rates on military impedimenta, $4,909.23, and afterwards restated by plaintiff without protest, at class D rates, with land-grant deductions, $2,482.37, amounts to $2,426.86.

XI

Restated bill 6629–30–31 (alias bill 74–76), B. L. 5216, for $657.65 was paid by the disbursing officer directly to the plaintiff on June 20, 1917; all the other restated bills referred to in Finding X, amounting to $26,157.20, were paid as restated by the disbursing officer to the Director General of Railroads beginning February 4, 1918, and ending June 14, 1918, pursuant to General Order No. 17, and were credited on the Railroad Administration books to the account "Individuals and companies," and were not credited to the plaintiff. For alleged overpayments made by the said disbursing officer on some of said bills the Auditor for the War Department, in auditing the said disbursing officer's accounts, disallowed the same, and on February 28, 1920, deducted $794.92 for land-grant and

$462.27 for car rent from Railroad Administration bills, a total of $1,257.19 (about which no question arises herein), which the Railroad Administration deducted from the $26,157.20 paid to it on corporate bills and retained, leaving a balance in the hands of the Railroad Administration for transportation prior to Federal control of $24,900.01.

The auditor in auditing the disbursing officer's accounts of the said corporate bills on February 11, 1920, disallowed $10,853.71 as
24 an overpayment by the disbursing officer as aforesaid to the Railroad Administration on the ground that the Government was entitled to have had its military impedimenta moved free in that amount under a ruling of the comptroller and thereupon the auditor deducted that amount from a pending account of the Railroad Administration for services by the latter. The Railroad Administration repaid itself by deducting this amount, $10,853.71, from the said balance on hand, $24,900.01, leaving a balance of $14,046.30.

General Order No. 17 is attached to these findings as Appendix A and is made part of this finding by reference thereto.

XII

On February 24, 1920, General Order No. 66, effective February 29, 1920, was issued by the United States Railroad Administration for the purpose of outlining the method to be followed in the separation of the accounts of the Railroad Administration and the different railroads under its control when the railroads should be returned to their owners, which provided, among other things, that—

"SEC. 5 (a). * * * If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lay-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds, chargeable to the period prior to Federal control, were carried on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account '(Name of corporation)—Corporate transactions,' and on the corporate books should be charged to an appropriate suspense account and credited to the account 'U. S. Government—Corporate transactions.'"

Copy of General Order No. 66 is attached to these findings as Appendix B and is made part hereof by reference.

XIII

At different times from April 21, 1920, to July 15, 1920, inclusive, the auditor deducted from other Railroad Administration bills

$3,382.33, upon the ground that the disbursing officer had overpaid corporate bills in that amount when the military impedimenta should have been transported free by plaintiff under tariffs in force, at the rate of one baggage car free for every 25 men in the troop movement. The Railroad Administration paid itself for the amount so deducted out of the balance of the funds in its hands paid on plaintiff's bills, $14,046.30 (see Finding XI), leaving a balance of such funds still in the hands of the Railroad Administration of $10,663.97. This balance of $10,663.97 was credited by the Director General of Railroads to plaintiff in August, 1920, on Railroad Administration journal entry 489 through General Order No. 17 account, entitled "P. & R. Ry. Co., assets, Dec. 31, 1917, collected."

When the transportation service was rendered the plaintiff charged on its books against the War Department the said amount of its bills $26,157.20, which includes the said sum of $1,257.19 mentioned in Finding XI and about which there is no controversy. If said sum of $10,663.97 be credited on the said bills, the amount deducted by the auditor, $14,236.04, remains as a charge.

XIV

On August 25, 1920, a complete settlement was made between the War Department and the Director General of Railroads of all unsettled accounts for transportation furnished by the Railroad Administration to the War Department between January 1, 1918, and March 1, 1920, the period of Federal control of railroads, and the amount paid by the War Department to the Railroad Administration in such settlement was $38,169,294.39.

On August 26, 1920, the comptroller of the Railroad Administration issued, with the approval of the Director General of Railroads, Accounting Circular 152, which reads:

"*To each carrier the properties of which were under Federal control at the termination thereof at midnight, February 29, 1920:*

"A settlement has been made between the War Department and the director general for all unpaid charges for passenger and freight transportation service, including Pullman fares and demurrage charges, rendered by the director general.

"Accounting officers are directed to close into an account, styled 'War Department transportation charges,' all unpaid accounts against the War Department carried in the Federal books covering such transportation service and to discontinue rendering Federal bills against the War Department for services of this nature.

"The account, 'War Department transportation charges,' shall be closed into the administration ledger control account and reported as a special item on Form AC 512–A in the same manner as prescribed in Accounting Circular 82 for reporting other items transferred to the administration ledger control account. Record of the balance so transferred shall be kept in the Federal accounts in such

detail that it may be readily audited by representatives of the Railroad Administration.

"Special attention is directed to the fact that the settlement above referred to involves the War Department only; that it does not include amounts due for the construction of tracks, service at cantonments, etc.; and does not include bills rendered in the Federal accounts for transportation service performed prior to Federal control.

"Unpaid bills carried in the Federal accounts against the War Department, for transportation service performed prior to Federal control, shall not be closed into the account, 'War Department transportation charges,' but instead shall be charged to the corporation through the account ('Name of corporation)—Corporate transactions.' Such charges against the corporation, when reported on settlement statement Form AC 510, shall be allocated to the quarter in which the corporation was originally credited with the amount, or bill was stated in the accounts."

XV

The final account of the final settlement between the Director General of Railroads and the plaintiff reads as follows:

"United States Railroad Administration, Director General of Railroads.—Comparison of claim submitted by the Philadelphia & Reading Railway Co., including the Atlantic City Railroad Co., Catasauqua & Fogelsville Railroad Co., the Chester & Delaware River Railroad Co., Middletown & Hummelstown Railroad Co., the Gettysburg & Harrisburg Railway Co., the North East Pennsylvania Railroad Co., Perkiomen Railroad Co., the Philadelphia & Chester Valley R. R. Co., the Philadelphia, Newton & New York R. R. Co., Pickering Valley Railroad Co., the Port Reading Railroad Co., Reading & Columbia Railroad Co., the Rupert & Bloomsburg R. R. Co., Stony Creek Railroad Co., the Tamaqua, Hazelton & Northern R. R. Co., the Williams Valley Railroad Co., the Philadelphia Grain Elevator Co., the Delaware River Ferry Co. of New Jersey, with books of the central administration adjusted to March 31, 1922."

	Corporation claim as of Mar. 31, 1922	Administration books as of Mar. 31, 1922	Difference
DUE TO CORPORATION			
Compensation	$36,861,152.00	$36,814,668.84	$46,483.16
Less advances, loans, etc	23,515,000.00	23,515,000.00	
Rental interest on completed	13,346,152.00	13,299,668.84	46,483.16
	421,260.54	421,260.54	
	13,767,412.54	13,720,928.38	46,483.16
OPEN ACCOUNTS DUE TO CORPORATION			
Cash on hand, Dec. 31, 1917	3,751,989.43	3,751,989.43	
Agent's and conductor's balance, Dec. 31, 1917	5,741,370.49	5,741,370.49	
Assets, Dec. 31, 1917, collected	4,559,283.87	4,909,283.87	
Total	14,452,643.79	14,452,643.79	

	Corporation claim as of Mar. 31, 1922	Administration books as of Mar. 31, 1922	Difference
OPEN ACCOUNTS DUE FROM CORPORATION			
Liabilities, Dec. 31, 1917, paid	$13,543,371.73	$13,543,371.73	
Corporate transactions	3,195,291.81	3,195,291.81	
Expense prior to Jan. 1, 1918	2,301,240.96	2,301,240.96	
Revenue prior to Jan. 1, 1918	523,946.05	523,946.05	
Total	19,563,850.55	19,563,850.55	
Balance due from corporation on open accounts	5,111,206.76	5,111,206.76	
Balance due to corporation	8,656,205.78	8,609,722.62	$46,483.16
OTHER ITEMS DUE TO CORPORATION			
Material and supplies	4,468,333.00	1,188,287.23	3,280,045.77
Equipment retired—Normal	1,983,888.05	1,925,887.31	58,000.74
Road property retired and not replaced—Normal	233,331.36	63,653.95	169,677.41
Road property retired and not replaced—Fire	13,846.00	11,108.12	2,737.88
Road property retired and replaced	654,723.04		654,723.04
Preliminary surveys—Projects abandoned	10,405.54	10,405.54	
Total	7,364,526.99	3,199,342.15	4,165,184.84
27 **OTHER ITEMS DUE FROM CORPORATION**			
Additions and betterments	$13,768,317.83	$13,768,317.83	
Salvage from A. & B. for war purposes	4,932.43	4,932.43	
Office furniture	16,985.24	16,985.24	
Interest other than rental	446,002.06	336,655.93	$109,346.13
Allocated equipment account	12,747,077.42	12,747,077.42	
Adjustments subsequent to March, 1922	4,141.22	4,141.22	
Interest on subsequent adjustments	465.84	465.84	
Adjustments unapproved by corporation		5,905.46	5,905.46
Interest on unapproved adjustments		664.29	664.29
Total	26,987,922.04	26,885,145.66	102,776.38
Balance due from corporation on other items	19,623,395.05	23,685,803.51	4,062,408.46
Balance due from corporation	10,967,189.27	15,076,080.89	4,108,891.62
DEPRECIATION OBLIGATION			
Equipment	3,866,526.91	3,777,229.00	89,297.91
Balance due from corporation	7,100,662.36	11,298,851.89	4,198,189.53
MAINTENANCE			
Way and structures—Under	2,609,552.71	2,321,411.00	288,141.71
Equipment—Under	611,689.21	977,420.89	365,751.68
Balance due to corporation on maintenance	3,221,241.92	3,298,851.89	77,609.97
Net balance due from corporation	3,879,420.44	8,000,000.00	4,120,579.56

I hereby certify that this is a correct copy.

(Signed) L. J. TRACY,
Comptroller, U. S. R. R. A.

The balance of $10,663.97 credited to plaintiff in August, 1920, was paid to plaintiff in the final settlement account above in the account "Assets December 31, 1917, collected". The deduction for free baggage, $14,236.04, did not enter into the said account.

XVI

When final settlement was effected, an agreement was entered into on June 30, 1922, between James C. Davis, Director General of Railroads and agent of the President, acting on behalf of the United States and the President, and the Philadelphia & Reading

system of railroads, through its President, the material parts of which read as follows:

"The said director general hereby acknowledges payment of the sum of eight million dollars ($8,000,000) by the said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, right, and demands of every kind and character which the said director general or anyone representing or claiming to represent the director general, the United States, or the President now has or hereafter may have or claim against the said companies or any of them growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 18th day of February, 1920, and the said companies both jointly and severally hereby acknowledge the return to and receipt by them of all their property and rights
28 which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations on his part, or on the part of the United States or the United States Railroad Administration, growing out of Federal control.

"The purpose and effect of this instrument is to evidence a complete and final settlement of all demands of every kind and character as between the parties hereto growing out of the Federal control of railroads * * *."

The said agreement is attached to these findings as Appendix C and is made a part hereof by reference thereto.

XVII

In pursuance of the authority contained in section 1 of the act of March 21, 1918 (40 Stat. 451–453), known as the Federal railroad control act, the Director General of Railroads on February 18, 1920, entered into an agreement with the Philadelphia & Reading Railway Co. and its 18 affiliated companies, the material parts of which read:

"SECTION 2.—PROPERTY TAKEN OVER

"SEC. 2. The railroads and systems of transportation of the company and of its said affiliated companies of which the President has taken over possession, use, control, and operation shall be considered as including:

"(a) The following roads and properties:

* * * * * * *

"(b) All materials and supplies on hand at midnight December 31, 1917.

"(c) All balances in the account or accounts representing the total of 'net balance receivable from agents and conductors' and 'net balance due from agents, pursers, and stewards' as of midnight December 31, 1917.

"SECTION 4.—OPERATION AND ACCOUNTING DURING FEDERAL CONTROL

"SEC. 4. (a) All amounts received by the director general under paragraph (c) of section 2 hereof and all other amounts whether received from the companies in cash or collected or realized upon by him from current operating assets belonging to the companies or arising from railway or water-line operations prior to midnight of December 31, 1917, shall be credited by him to the companies; and the director general shall, to the extent of the cash so received or realized, pay and charge to the companies all expenses arising out of railway or water-line operations prior to January 1, 1918, including reparation claims, and, unless objected to by the company, may pay and charge to the companies any of such expenses, including reparation claims, in excess of the cash so received or realized. Balances of the above accounts shall be struck quarterly on the last days of March, June, September, and December of each year, and the cash balance found on such adjustments to be due either party shall be then payable, and, if not paid, shall bear interest at the rate of 6 per cent per annum, unless the parties shall agree upon a different
29 rate; except that the rate of interest on any portion of a balance found due to the companies which is derived from cash in bank to the credit of the companies on interest, shall be adjusted in each case independently of this contract as the parties may agree.

"(b) Railway and water-line operating expenses, reparation and other claims, hire of equipment and joint facility rents shall be allocated with reference to the time when incurred as between the period prior and subsequent to midnight of December 31, 1917, and as between the period of Federal control and the period subsequent thereto. Railway and water-line operating revenues shall be allocated as between the period prior and subsequent to midnight of December 31, 1917, in accordance with the established accrual practices of the companies; except that where prior to midnight of December 31, 1917, the companies' part of a service on through business had been completed or carload lots on their own lines had reached destination, the revenue of the companies for such service shall be allocated to them; but as to classes of traffic where in the opinion of the director general such allocation will involve undue delay or undue absorption of accounting labor, such revenues shall be allocated in accordance with the established accrual practices of the companies. Like methods of accruing and allocating such revenues shall be used at the end of Federal control.

"(c) * * *

"(d) Cash receipts or disbursements and other items arising out of transactions which do not enter into or form a part of those used in determining the companies' standard return shall not be received or paid by the director general unless such transactions are negotiated or conducted by his order for account of the companies and with the consent of the company. When moneys are so received or

paid by the director general in connection with such corporate transactions they shall be credited or charged to the companies. There shall be an accounting of the amounts due by or to any of the parties under this paragraph at the end of each quarter year of Federal control, and the amount so found due shall be then payable and if not paid shall bear interest as provided in paragraph (a) of this section.

"SECTION 9.—FINAL ACCOUNTING

"Sec. 9. (a) * * *

"(b) At the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them and also materials and supplies equal in quantity, quality, and relative usefulness to that of the materials and supplies which he received, and to the extent that the director general does not return such materials and supplies he shall account for the same at prices prevailing at the end of Federal control. To the extent that the companies receive materials and supplies in excess of those delivered by them to the director general they shall account for the same at the prices prevailing at the end of Federal control and the balance shall be adjusted in cash."

* * * * * * *

30 Copy of the agreement between the Director General of Railroads and the Philadelphia & Reading Railway Co. and affiliated companies, dated February 18, 1924, is made part of this finding by reference thereto.

Conclusion of law

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $14,236.04 mentioned in Finding XIII.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of fourteen thousand, two hundred thirty-six dollars and four cents ($14,236.04).

The other items in the petition are dismissed.

Opinion

CAMPBELL, Chief Justice, delivered the opinion of the court:

This case has been before the court several times. At one time it was decided against the plaintiff, who made a motion for a new trial Pending that motion a considerable number of other cases were submitted, while still others were awaiting hearings, all of which involved the general question of the effect to be given settlements between the Director General of Railroads and the railroad companies. That being one of the questions in this case, the court referred this and other submitted cases of similar kind to a special commisisoner

for a full examination and report, authorizing him to take and hear additional evidence that might be adduced and to make a report of his findings and the evidence. This the special commissioner has done. In the order of reference it was provided that upon the coming in of the commissioner's report the parties in each of the cases, within a stated time, could file exceptions to any of his findings or conclusions. In the instant case exceptions were filed. The case has been heard upon the report, exceptions thereto, and the record. Those exceptions by both parties are overruled and the report of the special commissioner is confirmed. As required by the rules, the court has made findings of fact based upon this report and the evidence. The facts now found are materially different from those developed in former hearings and so far as the question of the director general's settlement is concerned present a substantially different case from that made in the earlier hearings. It becomes necessary to review them.

The petition was filed December 3, 1920, by the Philadelphia & Reading Railway Co., which rendered the transportation services out of which the matters here involved arose. The Reading Company, as the successor of this plaintiff company, has been substituted as party plaintiff. This substitution arose after the services were rendered and after all the questions involved in the case had arisen, but for brevity the term plaintiff will be used as inclusive of the original party, the Philadelphia & Reading Railway Co.

For transportation services rendered for the Government by the plaintiff companies bills were rendered in due course by the carrier to the proper disbursing officers. These bills were rendered long prior to the date of the passage of the railroad into Federal
31 control in December, 1917, but payments of them had not been made at that time. It was while the plaintiff company's properties were being operated by the Director General of Railroads that checks of the disbursing officer to the amount of $26,157.20 were drawn by this officer payable to the Philadelphia & Reading Railway Co., and intended to be in payment for the transportation services mentioned. The director general had utilized the services of the administrative and accounting officers of the railroad companies in large degree by retaining them in his service. Whether because of this condition or because the collection of such outstanding bills as these came within the contemplation of the law or the understanding of the parties, the proceeds from the checks went into the director general's accounts. The proceeds arising from the operation of the roads during Federal control became the property of the United States. (Act of March 21, 1918, section 12, 40 Stat. 407; Dupont Co. v. Davis, 264 U. S. 456.) Debts due the carriers at the time Federal control began occupied a different position. No question has been or can be raised as to his right to receive the payment at the time it was made. At that time, however, the agreement between the director general and the railroad companies that was authorized by the act of March 21, 1918 (40 Stat. 451) had not

been executed. For this reason probably the method of making entries on the books under specific accounts was held in abeyance. While the collection of the items appeared in proper form there was at that time no specific credit given on an account with the plaintiff.

After Federal control began the director general presented bills to the accounting or disbursing officers for transportation services rendered the Government by him upon plaintiff's lines. In the meantime, and before the director general's bills had been audited for payment, it was determined by the Auditor for the War Department in his audit of the disbursing officer's accounts that this officer had overpaid plaintiff's bills in the checks issued as stated and collected by the director general. The claim of the auditor was based upon a decision of the Comptroller of the Treasury that in the movement of troops of the Government the carriers were required to furnish free transportation of impedimenta on the basis of one car for each 25 men. The amount of this supposed overpayment was $14,236.04, and as a means of correcting it the course adopted by the accounting officers was to withhold payments of amounts due upon the director general's bills for services on plaintiff's lines until these withheld amounts equalled the amount of the supposed overpayment on plaintiff's bills. The director general's bills were accordingly underpaid from time to time or deductions were made from them to the amount of $14,236.04. While such a course, if unobjected to and allowed to stand, would reimburse the Government to the extent of the supposed overpayment on plaintiff's bills, it would accomplish this result at the expense of the director general's bills unless credit be given him in a like amount against the sum he received upon plaintiff's account. As a matter of fact, as hereinafter stated, the director general did account for the net sum remaining after deducting from the amount of the collected checks the amount of the underpayments of or deductions from his own bills. In this connection it may be observed that one of the important differences between the facts now found and those in the former hearings is
32 that contrary to what appeared formerly when the disbursing officer's checks for plaintiff's bills were received there was in fact no entry made of credit to plaintiff company, nor was a charge or debit made upon the books against plaintiff for the underpayments of the director general's bills. The matter, so far as actual book entries are concerned, was in abeyance, except as already stated the fact of the receipt of the proceeds of the checks properly appeared in the director general's books. It was not until the 18th day of February, 1920, within a few days of the date fixed for the termination of Federal control, that an agreement such as was authorized by the act of March 21, 1918, was entered into between the director general and the plaintiff (the Philadelphia & Reading and affiliated companies). This agreement mentions the properties taken under Federal control, and does not expressly name uncollected assets of the companies arising out of transactions occurring or services rendered prior to Federal control. There is at least, however, an implied

recognition of them in the provision of the agreement relative to the accounting by the director general for all amounts received by him "in cash or collected * * * by him from current operating assets belonging to the companies," and also in the requirement that at the end of Federal control the director general shall return to the companies all uncollected accounts received by him from them, as well as by other provisions of the agreement and the act under the authority of which it was made.

On the 30th day of June, 1922, an agreement, designated final settlement, was entered into between the director general and plaintiff's companies. Its declared purpose was to evidence a complete and final settlement of "all demands of every kind * * * as between the parties * * * growing out of the Federal control of railroads," except some specified matters not material here. On or about August 25, 1920, preceding the final settlement mentioned, a settlement had been made between the War Department and the director general of all unsettled accounts for transportation furnished during the period of Federal control, the War Department paying him the sum of more than thirty-eight millions of dollars.

By the petition here filed, as above stated, in December, 1920, recovery is sought for the amounts alleged to have been deducted from plaintiff's bill because of the comptroller's ruling (24 Comp. Dec. 774) relative to free transportation of impedimenta accompanying troop movements, the petition also claiming additional amounts which it is alleged the disbursing quartermaster deducted from its bills "as if the shipments had consisted of emigrant movables under current rulings of the comptroller." These two general classes of claims will be considered separately.

1. As to the right to a deduction from plaintiff's bills for services rendered prior to Federal control because of the comptroller's ruling to the effect that the Government was entitled to a free car for each 25 men (24 Comp. Dec. 774), this court has in several cases held the opposite view to be correct. The Government has accordingly been required to pay sums disallowed by the accounting officers upon the theory mentioned. If, therefore, the sum of the items involved in this branch of the case, namely, $14,236.04, had been deducted from plaintiff's bills and Federal control had not intervened
33 vened there can be no question that plaintiff would be entitled to recover the amount of the deduction. (See Missouri Pacific Ry. Co., 56 C. Cls. 341.) Under the facts now appearing from the findings we think that the right of recovery is unimpaired by the intervention of Federal control or by the settlement between the parties relative to Federal control. To make plain our views on this question may involve some repetition of facts already stated and we repeat them for the further reason that facts appear in some other cases of this class that may call for a differentiation of this case. The items in plaintiff's bills involved in this case were for services rendered prior to Federal control. They were not paid to

plaintiff but checks for them were collected by the director general amounting to $26,157.20. Included in this amount is $1,257.19, concerning which there is no controversy, and there remains after deducting it $24,900.01. These collections by the director general were during the year 1918, between the dates February 2 and June 12, and, therefore, were prior to the decision of the comptroller mentioned (24 Comp. Dec. 774), rendered June 18, 1918. These dates are important in considering the effect to be given the action of the director general in crediting plaintiff with the difference between his collection in 1918 of plaintiff's bills and the amounts subsequently withheld from his own bills by the accounting officers under the operation of the comptroller's ruling. Owing no doubt to the great number of bills coming before them during the periods in question the accounting officers did not conclude the auditing of the director general's bills for transportation by him over plaintiff's lines until long after the payment on plaintiff's bills had been made, but on June 18, 1918, the decision of the comptroller had been rendered. Whilst these collections of plaintiff's bills were made in 1918, and before this decision, it was not until divers times during 1920 that the director general's bills were subjected to the stated underpayments or deductions. In the meantime he held the proceeds of the collections subject to a proper accounting with plaintiff. That decision was, of course, controlling upon the accounting officers, and reasonably enough the director general would not seek to question it. If he did not accept the comptroller's views he manifestly would take upon himself the burden of establishing the contrary. The natural thing for him to do was to leave the matter where the action of the accounting officers placed it and hold himself responsible to plaintiff for what remained after applying the accounting officer's claim. This course would not prevent plaintiff subsequently asserting its claim against the Government for the amount withheld, but would leave the plaintiff and the Government free to settle their own differences. And as bearing further on the reasonableness of this course by the director general, it may be noted that it was after the transactions mentioned had occured—after the collections by him and the subsequent underpayments of or deductions from his own bills—that this court decided that the ruling of the comptroller was erroneous. (See Missouri Pacific Railroad Co. case, supra, decided June 13, 1921.) Thus the ruling of the comptroller, until authoritatively held erroneous by the courts, was binding upon the parties concerned during the times involved in the collections and in the underpayments or deductions, and there was no legal duty upon the
34 director general to question its correctness so far as these items were concerned. When notified, as already stated, that he had been overpaid by the disbursing officer on plaintiff's bills, and while he yet had in possession and control the collections, not having paid them over to plaintiff, he could with perfect propriety accede to the demand for a return of the supposed overpayments.

(See Story on Agency (9th ed.) par. 300; Cary v. Curtin, 3 How. 236, 249.) If it were necessary to find that the companies in whose right the collection was made had acquiesced in or ratified the director general's action in submitting to the deduction from his own accounts in order to reimburse the Government for the supposed overpayments, it would seem that such a finding would be supported by the fact that after the underpayments or deductions were made the plaintiff brought this suit in which it treats these deductions as though made from its own accounts. We are not left in uncertainty as to what occurred with reference to these items of collection when the preliminary statements of accounts incident to the final settlement and the settlement itself were concluded in June, 1922. The facts definitely show that in the class of items called corporate transactions there was credited to plaintiff an item of $10,663.97, which is the exact difference between the entire amount collected, as already stated, $24,900.01, upon plaintiff's bills and the underpayments or deductions from the director general's bills. These "corporate transactions" were of things occurring prior to Federal control. It thus is certain that the director general has accounted to the plaintiff for the balance in his hands of his collection of the plaintiff's bills mentioned. The Government having made itself whole by underpaying, or deducting from the director general's bills the supposed overpayments on plaintiff's bills, and the director general having accounted to plaintiff only for the balance, it is manifest that the plaintiff is the only person who can complain. It now treats the deductions as made from its own bills, and this is the effect of what was done. It sues to recover the amount of these deductions, which, as stated above, amount to $14,236.04, and we think it should recover this sum.

2. The other items of claim set up in the petition arise out of alleged deductions from plaintiff's bills made by the disbursing officer before paying any part of them. It is claimed not only that the deductions were improper, but that they were made before the checks already mentioned were issued. The facts show, however, that bills were presented to the disbursing officer stated according to certain tariff charges, which that officer notified plaintiff he was not authorized to pay. Thereupon the plaintiff's bills were voluntarily restated upon the basis of class D rates, and as thus restated the bills were paid without objection or protest by plaintiff. This branch of the case is controlled by the decided cases. (See Oregon-Washington Ry. Co., 255 U. S. 339, 54 C. Cls. 131; Baltimore & Ohio R. R. Co., 52 C. Cls. 468.)

The plaintiff should have judgment for the items involved in the first branch, $14,236.04, but as to those in the second branch, the petition should be dismissed. And it is so ordered.

GRAHAM, Judge; HAY, Judge; DOWNEY, Judge; and BOOTH, Judge, concur.

Court of Claims of the United States

No. 34747

READING COMPANY v. THE UNITED STATES

Appendices A, B, C

35 APPENDIX A

United States Railroad Administration

Director General of Railroads

GENERAL ORDER NO. 17

WASHINGTON, D. C., *April 3, 1918.*

To Chief Executive Officers of Carriers Subject to Federal Control:

It is hereby ordered that the following rules and regulations shall be observed and shall govern the recording of and accounting for all transactions which arise during Federal control:

(1) For accounting purposes Federal control began as of January 1, 1918. Immediate steps shall be taken by each carrier subject thereto, to open new and separate books of accounts, such as cash books, general and subsidiary ledgers and journals, and all supporting and subsidiary books and records incident thereto, upon which shall be recorded transactions which arise under and are incident to Federal control on and after January 1, 1918. Such books shall be designated and are hereinafter referred to as "Federal books."

(2) The totals of the accounts "Cash," "Demand loans and deposits," and "Time drafts and deposits" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to accounts of the same titles, and credited to a deferred liability account styled "(Name of corporation)—Cash—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Cash—December 31, 1917." All cash transactions subsequent to December 31, 1917, relating to operations prior or subsequent thereto, shall be recorded in the Federal cash book opened as of January 1, 1918.

(3) The total of account "Net balance receivable from agents and conductors" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Agents' and conductors' balances—December 31, 1917." On the corporate books the amount of such balances should be transferred to a deferred asset account styled "U. S. Government—Agents' and conductors' balances—December 31, 1917."

(4) The total of account "Materials and supplies" appearing on the corporation's books as of December 31, 1917, shall be transferred to the Federal books, debited to an account of the same title, and credited to a deferred liability account styled "(Name of corporation)—Materials and supplies—December 31, 1917." On the corporate books the amount of such balance should be transferred to a deferred asset account styled "U. S. Government—Material and supplies—December 31, 1917."

(5) In addition to the assets above specified, there shall be likewise transferred to the Federal books and similarly recorded thereon, such other working assets of the corporation as may be mutually agreed upon.

(6) There shall be currently entered, upon such Federal books, in the manner and under the rules and regulations prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, all transactions involving revenues, expenses, taxes and rentals, and other items corresponding to those which constitute the basis upon which the standard return to the carrier shall be determined. Such entries shall include corresponding assets and liabilities and the cash settlement thereof; also all transactions involving materials and supplies subsequent to December 31, 1917.

36 (7) Transactions of the corporation, including those arising out of cash receipts or disbursements, which do not affect or which do not enter into and form a part of those used in determining the basis of standard return, such as interest and dividends received or paid, miscellaneous rents, and other similar corporate transactions, including additions and betterments, shall not be recorded on or passed through such Federal books unless such transactions be negotiated and conducted for account of the corporation by or under the direction of the director general. Where such income transactions are negotiated and conducted by or under the direction of the director general the transactions shall be recorded on the Federal books but credited or charged to an account to be opened, styled "(Name of corporation)—Corporate income transactions." Concurrently, corresponding entries should be made on the corporate books charging or crediting the accounts prescribed by the Interstate Commerce Commission or which may hereafter be prescribed, the offset being in an account styled "U. S. Government—Corporate income transactions." Where additions and betterments are made by or under the direction of the director general, the expenditures shall be charged on the Federal books to a deferred asset account "(Name of corporation)—Additions and betterments." Concurrently, entries should be made on the corporate books, charging the appropriate accounts and crediting a deferred liability account "U. S. Government—Additions and betterments."

(8) Current or operating assets, other than those prescribed in paragraphs (2), (3), (4), and (5) hereof, such as balances due

from individuals and companies, and liabilities, such as vouchers, payrolls, etc., which were due to or by the corporation as of December 31, 1917, shall not be transferred in detail to the Federal books; but as and when such assets are collected or the liabilities are paid they shall be credited or debited, as the case may be, on the Federal books to a deferred liability account styled "(Name of corporation)—Assets, December 31, 1917, collected," or to a deferred asset account "(Name of corporation)—Liabilities, December 31, 1917, paid." There should be concurrently made, on the corporate books, corresponding entries debiting and crediting the U. S. Government with assets collected and liabilities paid.

(9) Transactions relating to operations, as defined in paragraph (6) hereof, if not previously accrued, shall be included in and shall form a part of the operating results of each carrier regardless of the date thereof. Items clearly applicable to the period prior to January 1, 1918, commonly called "lap-overs," shall be ascertained currently, set up on the Federal books, and included in the appropriate accounts as heretofore. At the end of each month, the total of "lap-over" credit items shall be charged to an unadjusted debit account styled "Revenue prior to January 1, 1918," and credited to a deferred liability account styled "(Name of corporation)—Revenue prior to January 1, 1918." The total of "lap-over" debit items shall be credited to an unadjusted credit account styled "Expense prior to January 1, 1918," and charged to a deferred asset account styled "(Name of corporation)—Expense prior to January 1, 1918." Operating revenues which have been accrued currently in accordance with the established practice of the carrier, shall be considered as current revenues and not as "lap-over" items.

(10) The accounts between the U. S. Government and the corporation, for which provision is made herein, shall be adjusted in such manner as may be hereafter agreed upon.

(11) Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under its requirements shall be addressed to the director of public service and accounting.

W. G. McAdoo,
Director General of Railroads.

37 APPENDIX B

UNITED STATES RAILROAD ADMINISTRATION,
Washington, February 24, 1920.

GENERAL ORDER NO. 66

To provide accounting procedure incident to the termination of Federal control and to reestablish as of the end of Federal control the instructions relative to allocation of revenues and expenses as between the United States Railroad Administration and the corporations, applied as of the beginning of Federal control, it is ordered

that the following regulations be observed in accounting for transactions relating to the Federal control of transportation systems:

1. Books and accounts

The separate books of account, such as the Federal Treasurer's cash book, the general and the necessary subsidiary ledgers and journals, and all supporting books and records relating thereto, upon which are recorded transactions incident to Federal control and which have been designated as "Federal books," shall be continued in use after February 29, 1920, for the purpose of recording therein Federal control transactions after the period of Federal operation ceases and until further ordered. Transactions arising out of operations subsequent to February 29, 1920, shall not be entered on the Federal books, but should be entered on the corporate books; likewise all transactions not previously accounted for either on the Federal or corporate books relating to the period prior to Federal control should be entered on the corporate books and shall be omitted from the Federal books.

2. Cash

(a) The Federal Treasurer's cash book, in which is recorded the balance of cash on hand February 29, 1920, shall be continued in use after that date until further ordered, and all Federal control cash transactions arising after the end of Federal control shall be entered in such cash book in accordance with instructions here following.

(b) The total of the amount of cash, if any, transferred to the corporation from the cash in the hands of the Federal Treasurer in accordance with General Order No. 68 shall be charged on the Federal books to a deferred asset account styled "(Name of corporation)—Federal cash, February 29, 1920." The amount of such cash transferred should be entered in the corporate cash book, and
38 on the corporate general books should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Federal cash, February 29, 1920."

(c) The balance in the account appearing on the Federal books representing cash in transit applicable to accounts for the period prior to March 1, 1920, shall be charged on such books to a current asset account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books corresponding entry should be made, debiting the appropriate account or accounts and crediting a current liability account styled "U. S. Government—Federal cash in transit, February 29, 1920." When such cash is received by the corporation it shall be paid over daily into the Federal cash account and entered on the Federal books as a credit to the account styled "(Name of corporation)—Federal cash in transit, February 29, 1920." On the corporate books correspond-

ing entry should be made debiting the account "U. S. Government—Federal cash in transit, February 29, 1920."

(d) When cash is realized from assets of the director general, the amount thereof shall be credited through the Federal cash book to the proper accounts. This refers to assets recorded as of February 29, 1920, and those subsequently recorded on the Federal books. This cash shall not be entered on the corporate books in any manner, except as provided in 2 (c), 2 (f) and section 7.

(e) All authorized payments of liabilities of the director general made out of Federal cash shall be charged on the Federal cash book to the proper accounts. Such payment should not be entered on the corporate books in any manner, except as provided in section 7.

(f) On and after March 1, 1920, all remittances (except those deposited in the Federal cash and accounted for as applicable to the agents' and conductors' accounts for February, 1920) received from agents and conductors shall, in the first instance be entered in the corporate cash book and credited to the appropriate accounts on the corporate general books. To the extent that items standing in the account "Agents' and conductors' balances" as of February 29, 1920, are included in such remittances, the amount shall be reported to the accounting department and the aggregate paid over daily into the Federal cash. Such payment should be charged on the corporate books to the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920." On the Federal books the payments shall be charged to "Cash" and credited to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." This method of daily settlements shall apply to agents and conductors' unremitted cash on hand at midnight February 29, 1920, and to all collections made by agents and conductors during the month of March, 1920, applicable to bal-
39 ances of February 29, 1920. The balance in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," after such collections have been credited thereto shall be treated as an open account, includible on quarterly settlement Form AC–510.

3. Agents' and conductors' balances

(a) The total of the accounts representing amounts carried as due from agents and conductors appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited on the Federal books to an account styled "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount of such balances should be debited to the appropriate account or accounts and credited to a deferred liability account styled "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

(b) Any portion of the balance in the account representing agents' and conductors' balances at December 31, 1917, credited on the Fed-

eral books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," which was subsequently transferred from the agents' and conductors' accounts to accounts receivable, or other asset or liability accounts, other than those prefixed with the name of the corporation, or is in the balances carried to the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," and is uncollected as of February 29, 1920, shall also be transferred on the Federal books to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate books the amount should be debited to the appropriate accounts and credited to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917."

(c) If amounts representing advances and prepaid charges on waybills outstanding December 31, 1917, were transferred to the Federal books, the balances in the advances and prepaid accounts shall be transferred to the corporate books, and on the Federal books included in the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." On the corporate books the amount should be carried to the proper account or accounts, and should be included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920."

If amounts of advances and prepaid charges on waybills dated prior to January 1, 1918, transferred from the corporate to the Federal books and included in the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," are outstanding as of February 29, 1920, the amounts thereof shall on the Federal books be transferred from the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920," to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917." On the corporate
40 books such amounts should be transferred from the account "U. S. Government—Agents' and conductors' balances, Federal, February 20, 1920," to the account "U. S. Government—Agents' and conductors' balances, December 31, 1917." The amounts to be transferred to the account "(Name of corporation)—Agents' and conductors' balances, December 31, 1917," provided in paragraphs (b) and (c) of this section, shall be reported on Form AC–510 as for the first quarter of 1918.

(d) In the event that amounts included in the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," set up on the corporate books as provided in paragraph 3 (a) hereof are later found to be chargeable to such accounts as "Material and supplies," "Additions and betterments," "Individuals and companies," or other accounts on or properly includible on the Federal books, entry should be made on the corporate books charging the account "U. S. Government—Agents' and conductors' balances, Federal, February 29, 1920," crediting the amount thereof to agents' and conductors' accounts. On the Federal books an entry covering

such items shall be made charging the appropriate account or accounts and crediting the account "(Name of corporation)—Agents' and conductors' balances, Federal, February 29, 1920." Amounts relating to material and supplies shall be, on the Federal books, charged to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," instead of to "Material and supplies." An additional entry on the corporate books should be made in respect to the amounts chargeable to "Material and supplies" account, debiting "Material and supplies" account and crediting "U. S. Government—Federal material and supplies, February 29, 1920."

4. Material and supplies

(a) The total of the account "Material and supplies" appearing on the Federal books as of February 29, 1920, shall be transferred to the corporate books and debited to a deferred asset account on the Federal books styled "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such balance should be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal material and supplies, February 29, 1920."

(b) All material and supplies received prior to March 1, 1920, shall be accounted for in the Federal books. All invoices for such material and supplies referred to in the previous sentence as are vouchered after the close of the accounts for the month of February, 1920, shall be covered by Federal form of vouchers and the cost of all such material and supplies shall be added to the account "(Name of corporation)—Federal material and supplies, February 29, 1920." On the corporate books the amount of such vouchers should be charged to appropriate account for material and supplies and credited to the account "U. S. Government—Federal material and supplies, February 29, 1920."

41 (c) Amounts paid prior to March 1, 1920, for material and supplies not received at midnight February 29, 1920, shall not be included on the Federal books in the account representing stock of material and supplies or in the account "(name of corporation)—Federal material and supplies, February 29, 1920." Neither shall material represented thereby be included in the inventory taken in accordance with the provisions of General Order No. 62. Such amounts shall instead be charged on the Federal books to an appropriate deferred asset account.

When the material and supplies therefor are received, or used by the corporation, the amounts shall, on the Federal books, be charged to the corporation through a deferred asset account styled "(Name of corporation)—Federal assets collected," and should, on the corporate books, be charged to the appropriate account and credited to a deferred liability account styled "U. S. Government—Federal assets collected."

(d) Material and supplies ordered prior to March 1, 1920, received and paid for by the corporation subsequent to February 29, 1920, shall not be entered in the Federal accounts in any manner.

5. Other accounts transferred

(a) In addition to the asset accounts above specified, there shall be likewise transferred to the corporate books other asset accounts of the Federal administration, similar to those sundry asset accounts which were taken over on the Federal books in the separation of accounts at the beginning of Federal control or subsequent thereto. The items here referred to are such as insurance premiums paid in advance, taxes paid in advance. Additional items of miscellaneous assets (for example, material loaned or leased), or liabilities, should be similarly transferred as may be mutually agreed upon.

Subsequent to February 29, 1920, cash vouchers should not be made for reimbursement of working funds expended during February, 1920, and previous months, but if such expenditures are approved the amounts thereof shall, on the Federal books, be charged to the appropriate accounts and credited to the working-fund account. It is suggested that the corporation take over the balance of cash in working funds by paying the aggregate amount thereof into the Federal cash.

Hospital and other funds for which the railroad is custodian shall be disposed of in accordance with General Order No. 68.

If during the period of Federal operations amounts representing overcharge freight claims paid out of Federal funds, affecting traffic, the revenues from which were included in corporation revenue or credited to it as lap-over revenue on the Federal books, or amounts representing loss and damage claims paid out of Federal funds chargeable to the period prior to Federal control, were carried
42 on the Federal books in suspense accounts pending adjustment thereof with other carrier corporations, or pending receipt of additional information wherewith to dispose of the amounts carried, and such amounts are carried in suspense account as of February 29, 1920, they shall be charged to the corporation. Such amounts shall on the Federal books be charged to the account "(Name of corporation)—Corporate transactions," and on the corporate books should be charged to an appropriate suspense account and credited to the account "U. S. Government—Corporate transactions."

(b) The value of mileage scrip introduced during Federal control, sold on or prior to February 29, 1920, and honored subsequently, shall be credited on the Federal books to the account "(Name of corporation)—Federal mileage scrip," and entry should be made on the corporate books charging "U. S. Government—Federal mileage scrip." Such scrip collection should not be destroyed until the account has been audited by administration accountants, or unless permission is obtained from the comptroller of the Railroad Administration. If in the establishment of accounts at the beginning of

Federal control the mileage liability on the corporate books was made subject to an equitable adjustment when it appeared that no further mileage would be presented, a similar arrangement will be made as to the balance on the Federal books as of February 29, 1920.

6. Allocation of revenues and expenses

(a) Railway operating revenues and taxes shall be allocated to the period of Federal and corporate operations in accordance with the provisions of the standard agreement.

(b) Railway operating expenses, reparation and other claims, hire of equipment and joint facility rents, and any other accounts (except as provided in par. (a)), which constitutes the basis of the standard return, shall be allocated with reference to the time when incurred as between the period of Federal control and the period prior and subsequent thereto.

7. Recording Federal control transactions and lap-over revenues and expenses

(a) There shall be entered currently after February 29, 1920, upon the Federal books referred to in section 1 hereof, record of all transactions arising out of Federal control.

(b) Bills for accounts collectible and vouchers for accounts payable covering all transactions arising out of Federal operations shall be prepared, respectively, on United States Railroad Administration bill and voucher forms, recorded in the appropriate Federal bill and voucher registers, and charged or credited on the Federal books to the appropriate accounts.

43 (c) It is desired that transactions arising out of Federal control should not be entered in the corporate books in any manner; likewise it is desired that corporate transactions should not be included in the Federal accounts. However, it may be necessary in exceptional cases, as in the case of interline freight and passenger transactions, to include Federal transactions in the corporate accounts or corporate transactions in the Federal accounts. In such cases the amounts due to or from the Federal management should be credited on the corporate books to a deferred liability account styled "U. S. Government—Federal assets collected" or debited to a deferred asset account styled "U. S. Government—Federal liabilities paid," as may be appropriate. In the Federal books such amounts shall be included, as may be appropriate, in a deferred liability account styled "(Name of corporation)—Federal liabilities paid" or in a deferred asset account styled "(Name of corporation)—Federal assets collected."

The net amount of cash realized or paid in settlement of lap-over revenues and expenses of the Federal period should be ascertained and appropriate cash settlement made monthly. The amounts thereof shall be entered on the Federal cash books and shall be debited or credited as may be appropriate to the accounts "(Name of corpora-

tion)—Federal assets collected" or "(Name of corporation)—Federal liabilities paid." Corresponding contra-entries should be made on the corporate books.

(d) If Federal revenue and expense items are reported and included in the revenue or expense accounts stated on the corporate books, as in the case of interline freight accounts, such amounts shall be accumulated in monthly totals from the corporate book records and accounted for as follows:

The total credit to the Federal income accounts should be charged on the corporate books to the appropriate primary revenue accounts and credited to the Federal management through the account "U. S. Government—Federal assets collected."

On the Federal books the same amounts shall be charged to the corporation through the account "(Name of corporation)—Federal assests collected" and credited to the appropriate primary revenue account.

The total debit to the Federal income accounts should be credited on the corporate books to the appropriate expense or other accounts and charged to the Federal management through the account "U. S. Government—Federal liabilities paid."

On the Federal books the same amounts shall be credited to the corporation through the account "(Name of corporation)—Federal liabilities paid" and charged to the primary operating expenses or other accounts.

(e) In order to preserve the continuity of the income accounts and statistics of carriers, that such income accounts and statistics
44 may be complete, and that there shall not be omitted therefrom amounts which would have been included in the appropriate accounts had there been no Federal control of railroads, at the end of each audit month, the total of the amounts, appearing on the Federal books, charged and credited to the accounts forming the basis upon which the standard return was determined, should be charged and credited on the corporate books to the appropriate primary revenue, expense or income accounts and debited or credited to subaccounts of Income Accounts Nos. 519 and 551, as the case may be, styled "Revenues Federal" or "Expenses Federal," as may be appropriate. No corresponding adjusting entry shall be made on the Federal books of the individual carriers. Such an entry will be made in Washington based on the aggregate totals of the monthly reports made in response to the provisions of Accounting Circular No. 82.

8. Monthly and quarterly reports

Monthly and quarterly reports in accordance with provisions of Accounting Circulars Nos. 55 and 82, shall be rendered until the accounts on the Federal books are completely liquidated or adjusted, or until otherwise ordered.

The balances on the Federal books in all accounts prefixed with the name of the corporation authorized by this order shall be closed

monthly to "Administration ledger control account" in accordance with Accounting Circular No. 82 and, except as to the account "(Name of corporation)—Federal material and supplies, February 29, 1920," shall be reported on Form AC–510 in accordance with Accounting Circular No. 55.

9. General

Where the property was taken over for Federal operation at a date subsequent to December 31, 1917, the date as of which such property was taken over should be substituted for December 31, 1917, wherever mentioned in this order.

The foregoing instructions shall not apply as to those lines of railroads in the United States under Federal operation at midnight February 29, 1920, that are operated thereafter as parts of a common carrier system or systems in countries adjacent to the United States, and whose treasurer and accounting officer and general accounts are located in those countries. In such cases special instructions will be given by the comptroller.

Inquiries as to the interpretation and application of the provisions of this order and the procedure to be observed under the requirements shall be addressed to Mr. Geo. H. Parker, comptroller.

WALKER D. HINES,
Director General of Railroads.

45 UNITED STATES RAILROAD ADMINISTRATION,
Washington, June 11, 1920.

GENERAL ORDER NO. 66–A

Paragraph (e) of section 7 of General Order No. 66 is hereby cancelled.

JOHN BARTON PAYNE,
Director General of Railroads.

46 APPENDIX C

FINAL SETTLEMENT

This agreement, entered into this 30th day of June, A. D. 1922, by and between James C. Davis, Director General of Railroads and agent of the President, acting on behalf of the United States and the President, hereinafter called the "director general," and the Philadelphia and Reading Railway Company, Atlantic City Railroad Company, Catasauqua and Fogelsville Railroad Company, the Chester and Delaware River Railroad Company, the Gettysburg & Harrisburg Railway Company, Middltown & Hummelstown Railroad Company, the North East Pennsylvania Railroad Company, Perklemen Railroad Company, the Philadelphia and Chester Valley Railroad Company, the Philadelphia Newtown and New York Rail-

road Company, Pickering Valley Railroad Company, the Port Reading Railroad Company, Reading and Columbia Railroad Company, the Rupert and Bloomsburg Railroad Company, Stony Creek Railroad Company, the Tamaqua, Hazleton & Northern Railroad Company, the Williams Valley Railroad Company, the Philadelphia Grain Elevator Company, and the Delaware River Ferry Company of New Jersey, hereinafter called the "companies," witnesseth:

The said director general hereby acknowledges payment of the sum of eight million dollars ($8,000,000.00) by the said companies, the receipt whereof is hereby acknowledged, in full satisfaction and discharge of all claims, rights, and demands, of every kind and character, which the said director general, or any one representing or claiming to represent the director general, the United States, or the President, now has or hereafter may have or claim against the said companies, or any of them, growing out of or connected with the possession, use, and operation of the companies' property by the United States during the period of Federal control, or out of the contract between the parties dated the 18th day of February, 1920; and the said companies, both jointly and severally, hereby acknowledge the return to and receipt by them of all their property and rights which they are entitled to, and further acknowledge that the director general has fully and completely complied with and satisfied all obligations on his part, or on the part of the United States, or the United States Railroad Administration, growing out of Federal control."

The purpose and effect of this instrument is to evidence a complete and final settlement of all demands, of every kind and character, as between the parties hereto, growing out of the Federal control of railroads, save and except that the following matters are not included in this adjustment and are not affected thereby:

Exceptions

1. The obligation on the part of the companies, as expressed in the standard form of contract between the director general and the companies, as to the conduct of litigation arising out of Federal control (except as to claims and suits of carriers against the director general or the United States), as same is stated in paragraph (f) of section 9 of said contract, is to continue and is not affected by this settlement.

2. This settlement does not include or affect any moneys or assets of the director general turned over to the companies pursuant to General Order No. 68, the account created by this order to be adjusted as though this agreement had not been made.

3. This settlement does not include the obligations of the director general assumed in paragraphs (i) and (j) of section 4 of said contract, to save the companies harmless as to claims, if any, of third persons, or the obligations of the director general in respect to the

payment of taxes under section 6 of the contract; provided further,
that this settlement does not include claims, suits, and judg-
47 ments based on causes of action arising between twelve o'clock,
noon, December 28th, 1917, and twelve o'clock, midnight, of December 31st, 1917, during which period the carriers assume all liability.

4. This settlement does not affect or alter any obligation executed by the companies, or any of them, for amounts loaned, advanced, or funded by the director general, or amounts due by reason of any equipment trust agreements, all such obligations on the part of the companies to remain in full force, the same as if this agreement had not been entered into.

In witness whereof the parties to this agreement have duly signed, sealed, and executed same in quadruplicate, such agreement being duly executed by the president of each of the companies and attested by the secretary, with the corporate seal hereto annexed, and the said president hereby certifies that he has been duly authorized to execute and deliver this agreement on the part of each of the companies by a vote of the respective boards of directors of said companies.

(Then follows the signature of James C. Davis, Director General of Railroads and agent of the President, and Agnew T. Dice, president of the various railroad companies, comprising the Reading system, and attested by the secretary thereof, J. V. Hare.)

48 VII. *Judgment*

At a Court of Claims held in the city of Washington on the 5th day of January, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of fourteen thousand two hundred and thirty-six dollars and four cents ($14,236.04).

By the COURT.

VIII. *Defendant's petition for appeal*

(Filed April 3, 1925)

From the judgment rendered in the above-entitled cause on the 5th day of January, 1925, in favor of claimant, the defendants' by their Attorney General, on the 3rd day of April, 1925, make application for, and give notice of, an appeal to the Supreme Court of the United States.

HERMAN J. GALLOWAY,
Assistant Attorney General.

IX. *Order allowing defendant's petition for appeal*

It is ordered by the court this 13th day of April, 1925, that the defendant's application for appeal be and the same is allowed.

49 X. *Plaintiff's petition for appeal*

Filed April 4, 1925

The plaintiff in the above case makes application for an appeal to the Supreme Court of the United States.

DUDLEY & MICHENER,
Attorneys for Plaintiff.

XI. *Order allowing plaintiff's petition for appeal*

It is ordered by the court this 13th day of April, 1925, that the plaintiff's application for appeal be as the same is allowed.

50 In Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the history of proceedings had in said case; of the final argument and submission of case; of the order of court entered January 5, 1925; of the findings of fact, conclusion of law, and opinion of the court by Campbell, Ch. J.; of the judgment of the court; of the applications of defendant and plaintiff for an appeal to the Supreme Court of the United States, and of the orders of the court allowing said applications.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 17th day of April, A. D. 1925.

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsement on cover:] File No. 31101, 31102. Court of Claims. Term No. 401; The United States, appellant, vs. Reading Company. Term No. 402; Reading Company, appellant, vs. The United States. Filed April 30th, 1925. File No. 31101, 31102.

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